

REMARKS/ARGUMENTS

Claims 1-4, 6-13, 15, 16, 18, 20-23, 25-30, 41-45 and 48-50 remain pending in the instant application. Claims 1 and 48 have presently been amended. Support for the amendments to claims 1 and 48 may be found throughout the specification as originally filed, including, e.g., Figures 23-25 and 27 and page 23, lines 17-19, respectively. Claims 13, 16, 22, 23, 25, 27-30 and 41-45 have previously been withdrawn. Claims 5, 14, 17, 19, 24, 31-40, 46 and 47 have previously been canceled.

1. Rejection of Claims 1, 2, 4, 6-10, 15, 18, 20 and 48-50 Under 35 U.S.C. 102(e)

Claims 1, 2, 4, 6-10, 15, 18, 20 and 48-50 stand rejected under 35 U.S.C. 102(e) as being anticipated by Michelson et al. (U.S. Pat. No. 6,890,355).

With respect to claim 1, the Office Action urges that Michelson discloses a metal vertebral body replacement comprising a body 300, nonparallel top and bottom surfaces having a plurality of through holes and continuous grooves 314 and protrusions, a planar growth hole face 310 and a curved growth hole face 312 having four through holes 319 and a curved anterior face 304.

Applicant respectfully submits that Michelson fails to disclose every feature of amended claim 1. Specifically, Michelson fails to disclose at least one elongated groove in the top of the body that extends through the anterior face and the posterior face of the body. As clearly shown in, e.g., Figures 23-25 and 27 of the instant application, groove 160 in the top 116 of the body 112 extends all the way through both the anterior face 113 and the posterior face 114. In other words, the groove 160 comprises no end walls that are generally perpendicular to the length of the groove 160.

To the contrary, Figure 14 of Michelson clearly discloses openings 314' in the top 306' of the member 300' that do not extend through the trailing portions 302' and 304' of the member 300'. Rather, the openings 314' have terminal ends that contain the opening 306' to within the top 306' of the member.

Applicant believes claim 1 is allowable, at least, for this reason.

Applicant believes claims 2, 4, 6-10, 15, 18, 20 and 48-50 are allowable, at least, because they depend from claim 1.

Claim 48 is believed to be allowable for additional reasons. Specifically, Applicant respectfully submits that Michelson fails to disclose at least one groove of the bottom being intersected by a plane parallel to the planar growth hole face and none of the at least one groove of the top being intersected by that same plane. As shown in Figure 14 of Michelson, any plane parallel to the planar interior side 310' that intersects an opening 314' on the bottom of the member 300' will also intersect an opening 314' on the top 306' of the member 300'. This is due to the fact that the openings 314' in the top 306' of the member 300' are the mirror image of the openings 314' in the bottom of the member 300'. Each of the openings 314' in the top 306' of the member 300 are identical in shape to and aligned with corresponding openings 314' in the bottom of the member 300'. To the contrary, the presently claimed vertebral body replacement may include grooves in the top that are not identical to or aligned with the grooves on the bottom. For example, the bottom might include three grooves while the top may include only two grooves. In such a configuration, a plane parallel to the planar hole growth face that intersects the extra groove in the bottom will not intersect one of the two grooves on the top. Accordingly, Applicant respectfully submits that Michelson fails to disclose the feature recited in claim 48.

2. Rejection of Claim 21 under 35 U.S.C. 103(a)

Claim 21 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Michelson in view of Paul et al. (U.S. Pat. No. 6,143,033).

Applicant believes claim 21 is allowable, at least, because it depends from claim 1 and because Paul fails to disclose that which is missing from Michelson as discussed in Section 1 above.

3. Rejection of Claim 26 under 35 U.S.C. 103(a)

Claim 26 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Michelson in view of Wagner et al. (U.S. Pat. No. 5,306,309).

Applicant believes claim 26 is allowable, at least, because it depends from claim 1 and because Wagner fails to disclose that which is missing from Michelson as discussed in Section 1 above.

4. Conclusion

In light of the amendments and remarks provided herein, applicants respectfully request the issuance of a Notice of Allowance.

Respectfully submitted,
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